



# AIA® Document A421™ – 2018

## *Standard Form of Master Agreement Between Contractor and Subcontractor where Work is provided under multiple Work Orders*

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(In words, indicate day, month, and year.)

BETWEEN the Contractor:  
(Name, legal status, address, and other information)

and the Subcontractor:  
(Name, legal status, address, and other information)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document does not contain a description of the Subcontractor's scope of Work or related terms. This document is intended to be used in conjunction with AIA Document A422™–2018, Work Order for use with Master Agreement Between Contractor and Subcontractor.

The Contractor and Subcontractor agree as follows.

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### ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for one year after the date first written above (“Date of this Master Agreement.”)

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order.

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Work Orders under this Master Agreement are completed or terminated.

§ 1.4 The Contractor identifies the following representative authorized to act on the Contractors’ behalf with respect to this Master Agreement:

§ 1.4.1 In each Work Order, the Contractor will identify a representative authorized to act on the Contractors’ behalf with respect to the Work Order.

§ 1.5 The Subcontractor identifies the following representative authorized to act on the Subcontractor’s behalf with respect to this Master Agreement:

§ 1.5.1 In each Work Order, the Subcontractor will identify a representative authorized to act on behalf of the Subcontractor with respect to the Work Order.

## ARTICLE 2 WORK ORDERS

§ 2.1 The Contractor is not required to issue any Work Orders under this Master Agreement.

§ 2.2 The Subcontractor may decline to accept any Work Order issued by the Contractor.

§ 2.3 The Subcontractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A422-2018, Work Order, or such other document as the Contractor and Subcontractor may mutually agree upon. Each Work Order shall state the name, location, and detailed description of the Project; identify the Owner and Architect; state the Subcontract Time; state the Subcontract Sum; describe the Subcontractor's Work; and enumerate the Subcontract Documents.

§ 2.4 The Contractor shall make the Subcontract Documents available to the Subcontractor prior to execution of the Work Order, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor.

## ARTICLE 3 SUBCONTRACT DOCUMENTS AND SUBCONTRACT

§ 3.1 The Subcontract Documents are enumerated in each Work Order and consist of (1) this Master Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) the Work Order executed by the Contractor and Subcontractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); (4) all Drawings, Specifications, and Addenda issued in connection with the Work Order; (5) other documents listed in the Work Order; and (6) Modifications issued after execution of the Work Order in accordance with the provisions of Article 7. These form the Subcontract and are as fully a part of the Subcontract as if attached to this Master Agreement or repeated herein.

§ 3.2 The Subcontract Documents for each Work Order form a separate Subcontract for construction of the Subcontractor's Work ("the Subcontract"). The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

§ 3.3 For each Work Order, terms not defined in the Prime Contract, this Master Agreement, or in the Work Order shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 3.4 The Subcontract may be amended or modified only by a Modification. A Modification is a written amendment to the Subcontract signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 7.

§ 3.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 3.6 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™-2017, General Conditions of the Contract for Construction.

## ARTICLE 4 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Master Agreement and, to the extent that the provisions of the Prime Contract apply to this Master Agreement and to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under the Prime Contract, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under the Prime Contract, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under the Prime Contract, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor that the Contractor, under the Prime Contract, has against the Owner, insofar as applicable to this Master Agreement. Where a provision of the Prime Contract is inconsistent with a provision of this Master Agreement, this Master Agreement shall govern.

## ARTICLE 5 CONTRACTOR

### § 5.1 General

§ 5.1.1 The Contractor is the person or entity identified as such in this Master Agreement and is referred to throughout the Subcontract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

§ 5.1.2 The Contractor shall render decisions in a timely manner and in accordance with the Contractor’s construction schedule.

### § 5.2 Services Provided by the Contractor

§ 5.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor’s Work to avoid conflicts or interference in the Subcontractor’s Work and shall review, and expedite written responses to, submittals made by the Subcontractor in accordance with Section 6.2.3 and Article 7. Promptly after execution of a Work Order, the Contractor shall provide the Subcontractor with copies of the Contractor’s construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor’s Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 5.2.2 The Contractor shall provide suitable areas for storage of the Subcontractor’s materials and equipment during the course of the Work. Except as previously agreed upon, additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor shall be reimbursed by the Contractor.

### § 5.3 Communications

§ 5.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of the Subcontract and that becomes available to the Contractor subsequent to execution of the Subcontract.

§ 5.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor’s employees or to the Subcontractor’s Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 5.3.3 The Contractor shall permit the Subcontractor to request information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 5.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor’s employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor’s compliance with such laws.

§ 5.3.5 The Contractor shall promptly notify the Subcontractor of any fault or defect in the Work under this Subcontract or nonconformity with the Subcontract Documents.

§ 5.3.6 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of, or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner’s interest therein. If the Contractor does not have such information, the Contractor shall request the information from the Owner and promptly furnish the information received from the Owner to the Subcontractor.

§ 5.3.7 If the Contractor asserts a Claim against, or defends a Claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the Claim that relates to the Work of the Subcontractor.

### § 5.4 Claims by the Contractor

§ 5.4.1 Liquidated damages, if provided for in the Prime Contract, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of the applicable Subcontract.

§ 5.4.2 The Contractor's Claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 seven days' notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

## § 5.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with the Subcontract and fails within five working days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 10.1.9, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor.

## ARTICLE 6 SUBCONTRACTOR

### § 6.1 General

The Subcontractor is the person or entity identified as such in this Master Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located.

### § 6.2 Execution and Progress of the Work

§ 6.2.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of the Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Master Agreement.

§ 6.2.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors.

### § 6.2.3 Submittals

§ 6.2.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 6.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 6.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of the Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 6.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 6.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of the Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 6.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under the Subcontract.



§ 6.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

### § 6.3 Permits, Fees, Notices, and Compliance with Laws

§ 6.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of the Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 6.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of the Subcontract.

### § 6.4 Safety Precautions and Procedures

§ 6.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of the Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within three days of an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 6.4.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 6.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 7 of this Master Agreement.

§ 6.4.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 6.4.3 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 6.4.5 The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 6.4.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

### § 6.5 Cleaning Up

§ 6.5.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under the Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 6.5.2 As provided under Section 5.4.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

## § 6.6 Warranty

§ 6.6.1 The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under the Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished.

§ 6.6.2 All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

## § 6.7 Indemnification

§ 6.7.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under the Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.7.

§ 6.7.2 In claims against any person or entity indemnified under this Section 6.7 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 6.7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor, or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## § 6.8 Remedies for Nonpayment

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in the Subcontract, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' notice to the Contractor, stop the Work of the Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay, and remobilization.

## § 6.9 Professional Services Provided by Subcontractor

§ 6.9.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

§ 6.9.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

§ 6.9.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

§ 6.9.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 6.9.

§ 6.9.5 The Subcontractor shall cause the professional services performed under this Section 6.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 6.9.

#### ARTICLE 7 CHANGES IN THE WORK

§ 7.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of a Modification to the Prime Contract issued after the execution of a Work Order, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 7.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating the Subcontract, to make changes in the Work within the general scope of the Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued after the execution of a Work Order, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 7.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time, and damages for delays, or other causes in accordance with the Subcontract Documents. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

#### ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 Subject to Sections 8.2 and 8.3, any claim, dispute, or other matter in question arising out of or related to the Subcontract shall be subject to the same dispute resolution provisions as set forth in the Prime Contract. If such matter relates to or is the subject of a lien arising out of the Subcontractor's services, the Subcontractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter under the dispute resolution provisions set forth in the Prime Contract.

§ 8.2 If the claim, dispute, or other matter in question arising out of or related to the Subcontract is unrelated to a dispute between the Contractor and Owner, or if the Subcontractor is legally precluded from being a party to the dispute resolution procedures set forth in the Prime Contract, then claims, disputes or other matters in question shall be resolved in accordance with this Section 8.2 and Section 8.3. Any such claim, dispute or matter in question shall be subject to mediation as a condition precedent to binding dispute resolution. Mediation shall be conducted as set forth in AIA Document A201-2017.

§ 8.3 If the parties do not resolve a claim, dispute, or matter in question through mediation, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

- ☐ Arbitration pursuant to the terms and conditions set forth in Section 15.4 of AIA Document A201™-2017
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*



If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.4 The Subcontractor shall indemnify and hold the Contractor and the Contractor's officers and employees harmless from and against damages, losses, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Subcontractor, its employees, and its Sub-subcontractors in the performance of the Work under the Subcontract.

§ 8.5 The Contractor shall indemnify and hold the Subcontractor and the Subcontractor's officers and employees harmless from and against damages, losses, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Contractor, its employees and its other Subcontractors in the performance of the Work under the Subcontract.

#### § 8.6 Waiver of Claims for Consequential Damages

The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to the Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 9. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Subcontract.

### ARTICLE 9 TERMINATION, SUSPENSION, OR ASSIGNMENT OF THE SUBCONTRACT

#### § 9.1 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under the Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, the Subcontractor's Sub-subcontractors, or their agents or employees or other persons or entities performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, as well as reasonable overhead and profit on work not executed and costs incurred by reason of such termination.

#### § 9.2 Termination by the Contractor

##### § 9.2.1 Termination for Cause

If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with the Subcontract and fails within a ten-day period after receipt of notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the difference to the Contractor.

##### § 9.2.2 Termination for Convenience

§ 9.2.2.1 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver notice to the Subcontractor.

§ 9.2.2.2 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work not executed.

§ 9.2.2.3 Upon receipt of notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

### § 9.3 Suspension by the Contractor for Convenience

§ 9.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of the Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 9.3.2 The Subcontract Time and Subcontract Sum shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as described in Section 9.3.1. Adjustment of the Subcontract Sum shall include profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of the Subcontract.

### § 9.4 Assignment of the Subcontract

§ 9.4.1 In the event the Owner terminates the Prime Contract for cause, the Subcontract is assigned to the Owner, provided the Owner accepts the assignment by notifying the Contractor and Subcontractor.

§ 9.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of the Subcontract, subcontract the whole of the Subcontract, or subcontract portions of the Subcontract.

§ 9.5 Termination of the Subcontract under this Article 9 shall not be deemed a termination of other Subcontracts under this Master Agreement.

## ARTICLE 10 PAYMENTS

### § 10.1 Subcontract Sum and Progress Payments

§ 10.1.1 Each Work Order shall include a Subcontract Sum. The Contractor shall pay the Subcontractor the Subcontract Sum in current funds in accordance with each individual Subcontract.

§ 10.1.2 Applications for Payment will be submitted individually for each Subcontract.

§ 10.1.3 Based upon Applications for Payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 10.1.4 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in the Work Order.

§ 10.1.5 Provided an Application for Payment is received by the Contractor not later than the \_\_\_\_ day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next Application for Payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Owner. If the Architect does not issue a Certificate for Payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Sections 10.1.6, 10.1.9, 10.1.10, and 10.2.

§ 10.1.6 If the Subcontractor's Application for Payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Architect.

§ 10.1.7 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent Application for Payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's Applications for Payment.

§ 10.1.8 Applications for Payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Application for Payment.

§ 10.1.9 Unless otherwise required by the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

§ 10.1.9.1 The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

§ 10.1.9.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault of the Subcontractor; and
- .4 Retainage withheld pursuant to Section 10.1.10 of this Agreement.

#### § 10.1.10 Retainage

§ 10.1.10.1 For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

§ 10.1.10.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

§ 10.1.10.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 10.1.10.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for substantial completion of portions of the Subcontractor's Work, insert provisions for such modification.)*

§ 10.1.11 Upon the partial or entire disapproval by the Contractor of the Subcontractor's Application for Payment, the Contractor shall provide notice to the Subcontractor. If the Subcontractor disputes the Contractor's decision regarding a Subcontractor's Application for Payment in whole or in part, the Subcontractor may submit a Claim in accordance with Article 8. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 10.1.12 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 10.2 Substantial Completion

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt Application for Payment for such Work. Within 30 days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

## § 10.3 Final Payment

§ 10.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a Certificate for Payment is not issued, or the Contractor does not receive timely payment, or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

*(Insert provisions for earlier final payment to the Subcontractor, if applicable.)*

§ 10.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final Application for Payment.

## § 10.4 Interest

Payments due and unpaid under the Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

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## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Subcontractor's Required Insurance Coverage

The Subcontractor shall purchase and maintain the insurance coverage required in this Article 11, and any additional coverages required for a specified project as set forth in a Work Order.

§ 11.1.1 The Subcontractor shall purchase and maintain the following types and limits of insurance, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

*(Specify each type of insurance, such as commercial general liability, automobile, worker's compensation, employers' liability, professional liability, and pollution, required to be carried by the Subcontractor, the limits of coverage for each type of insurance, and any other pertinent requirements.)*

Type of Insurance

Limits

Other Pertinent Requirements

§ 11.1.2 For each Subcontract, coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 11.1.3 If professional services are required under Section 6.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 11.1 for the following period after completion of the Work:

§ 11.1.4 **Certificates of Insurance.** The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 11 and any additional requirements set forth in the Subcontract at the following times: (1) prior to commencement of the Subcontractor's Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 11. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy.

§ 11.1.5 **Deductibles and Self-Insured Retentions.** The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

§ 11.1.6 **Additional Insured Obligations.** To the fullest extent permitted by law, the Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ 11.1.7 **Notice of Cancellation or Change in Coverage.** Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Master Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

## § 11.2 Subcontractor's Required Performance Bond and Payment Bond

The Subcontractor's performance bond and payment bond obligations shall be as required in the Work Order.



§ 11.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under the Subcontract, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### § 11.3 Contractor's Insurance and Bond Obligations

§ 11.3.1 The Contractor shall furnish to the Subcontractor certificates of insurance evidencing insurance coverage required of the Contractor under the Prime Contract.

§ 11.3.2 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

### § 11.4 Property Insurance

§ 11.4.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 11.4.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 11.4.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the Application for Payment process.

### § 11.5 Waivers of Subrogation

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor's Sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.5 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

## ARTICLE 12 MISCELLANEOUS PROVISIONS

§ 12.1 Each Work Order shall be governed by the law provided in the Prime Contract. If the Prime Contract does not have such a provision, the Work shall be governed by the law of the place where the Project described in the Work Order is located. If the parties have selected arbitration as the method of binding dispute resolution in Section 8.2, the Federal Arbitration Act shall govern the arbitration.

§ 12.2 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

### § 12.3 Notice

§ 12.3.1 Except as otherwise provided in Section 12.3.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 12.3.3.

§ 12.3.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 12.3.3 Notice in electronic format, pursuant to Section 12.3.1, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below: *(If other than in accordance with AIA Document E203™–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 12.4 Neither the Contractor's nor the Subcontractor's representatives shall be changed without ten days' prior notice to the other party.

§ 12.5 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

§ 12.6 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. Except where protocols have been established in the Prime Contract, the parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 12.6.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, or elsewhere in the Subcontract, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

#### ARTICLE 13 SCOPE OF THIS MASTER AGREEMENT

§ 13.1 This Master Agreement represents the entire and integrated Master Agreement between the Contractor and Subcontractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both Contractor and Subcontractor.

§ 13.2 This Master Agreement is comprised of the following documents listed below:

- .1 AIA Document A421™–2018, Standard Form Master Agreement Between Contractor and Subcontractor;
- .2 Prime Contract between the Owner and Contractor, including all exhibits thereto, attached as Exhibit A;
- .3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed;
- .4 Other documents:  
*(List other documents incorporated into this Master Agreement.)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
SUBCONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)